

REMARKS

Claims 1-44, 52-66 and 97 are pending in this application, with claims 1, 9, 10, 18-20, 33, 43, 44 and 52 being independent. In this Amendment, claims 1-14, 17-29, 32-44, 52-63, 66 and 97 have been amended.

The claims have generally been amended for the sake of improved clarity, and not for any reason relating to the statutory requirements for patentability.

Requirement to File Certified Copy of Corresponding PCT Application

The Office Action indicated that Applicant is required to file a certified copy of the corresponding PCT application to comply with 35 U.S.C. § 119(b). However, Applicant respectfully points out that the PCT application designated the U.S. and was filed in accordance with 35 U.S.C. § 363, and is equivalent to a U.S. application for the purposes of claiming priority. As a result, a certified copy of the corresponding PCT application should not be necessary with respect to the present application.

Objection to the Declaration

The Office Action objected to the declaration as allegedly being defective, indicating that priority to PCT Application Serial No. PCT/CA97/00418 is not properly claimed under 35 U.S.C. § 119. Applicant respectfully traverses this objection.

37 CFR § 1.63(c) requires that:

"Unless such information is supplied on an application data sheet in accordance with § 1.76, the oath or declaration must also identify: (2) Any **foreign** application for patent (or inventor's certificate) for which a claim for priority is made pursuant to 37 CFR § 1.55, and any foreign application having a filing date before that of the application on which priority is

claimed, by specifying the application number, country, day, month, and year of its filing."

Here, Applicant's application data sheet and declaration both correctly identify the only foreign application from which a right of priority is claimed under 35 U.S.C. § 119, i.e., GB 9 612 264.3. As set forth above, PCT/CA97/00418 is not a foreign application, as it was filed in accordance with 35 U.S.C. § 363, and has the effect of a national application for patent regularly-filed in the Patent Office.

Accordingly, Applicant respectfully requests that the objection to the declaration be withdrawn.

Objection to the Abstract

The Office Action objected to the abstract for containing legal phraseology, and for being too long. Without conceding the propriety of this objection, Applicant has amended the abstract for the sake of improved clarity. Applicant therefore respectfully requests that the objection to the abstract be withdrawn.

Objection to the Specification

The Office Action objected to the first paragraph of the specification as not containing the most recent status of U.S. Application Serial Nos. 10/023,869 and 09/147,373. The status of the U.S. Application Serial Nos. 10/023,869 and 09/147,373 has been updated in the first paragraph of the description, and the filing date of U.S. Application Serial No. 09/147,373 has been corrected. Applicant respectfully requests that the objection to the specification be withdrawn in view of these amendments.

Claim Rejections Under 35 U.S.C. § 112

The Office Action rejected claims 4, 11-13, 23, 28, 36, 41, 54 and 62 as being indefinite, on the grounds that the abbreviations "total Hb," "oxy-Hb," and "total Hb minus met-Hb" were not defined. The Office Action also rejected claims 12-13 as being indefinite, indicating that these claims should be amended to specify that the recited one or more than one substance is in addition to the substance that mimics turbidity or a perfluorocarbon-like blood substitute or both. The Office Action further rejected claims 17, 32 and 66 as being indefinite, on the grounds that the abbreviations "PVP" and "PEG" were not defined. The Office Action also objected to claim 55 as being indefinite, and suggested that this claim be amended to clarify that the recited analytes are found in the recited biological samples.

Claims 4, 11-13, 17, 23, 28, 32, 36, 41, 54-55, 62, and 66 have been amended in accordance with the Examiner's suggestions. Applicant respectfully requests that the various rejections under 35 U.S.C. § 112 be withdrawn in view of the amendments and remarks set forth above.

Obviousness-Type Double Patenting

The Office Action rejected claims 52-62 and 97 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-9 of U.S. Patent No. 6,828,152. The Office Action also provisionally rejected claims 1-44, 52-66 and 97 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 13-21, 24-37 and 40-56 of Applicant's copending U.S. Application No. 10/319,492.

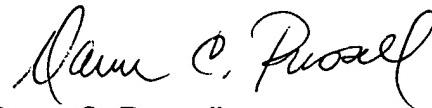
Without conceding the propriety of these obviousness-type double patenting rejections, Applicant submits that they have been obviated by the filing of the attached terminal disclaimer, and respectfully requests that they be withdrawn.

CONCLUSION

Applicant submits that the above-identified application is now in a condition for allowance, and favorable reconsideration and prompt allowance of these claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at (202) 775-5771.

In the event this paper is not considered to be timely filed, Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, referencing docket number 026806.00011.

Respectfully submitted,
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